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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,822	02/11/2002	Densen Cao	5061.16 P	4173

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EXAMINER

LEWIS, RALPH A

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/073,822

Applicant(s)

CAO, DENSEN

Examiner

Ralph A. Lewis

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Rejections based on 35 U.S.C. 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is dependent on a canceled claim.

Rejections based on Obvious-type Double Patenting

Acknowledgement is made of the terminal disclaimer filed June 21, 2004, however, the terminal disclaimer is improper as it improperly identifies the applications serial numbers being disclaimed. Additionally, the terminal disclaimer fails to overcome the obvious-type double patenting rejection based on applicant's earlier patent 6,331,111. Accordingly, the obvious-type double patent rejections are repeated herein.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-8 and 10-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of U.S. Patent No. 6,331,111. The patented claims of 6,331,111 set forth all the limitations of the present claims, with the exception of those directed to manner in which the semiconductors are constructed. Merely specifying a common manner in which the Logan et al semiconductors are to be made would have been obvious to one of ordinary skill in the art.

Claims 1-8 and 10-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over
claims 1-19 of copending Application No. 10/072,635;
claims 1-20 of copending Application No. 10/072,853;
claims 1-20 of copending Application No. 10/072,859; and
claims 1-20 of copending Application No. 10/076,128.

The limitations of the present claims all appear to broader or slightly different obvious versions of the pending claims in the above identified applications. More particularly each of the identified applications above specifically claim epitaxial layers. Merely leaving out limitations in order to make the claims broader or providing for different groupings of the elements set forth in the claims of the above identified pending applications would have been obvious to the ordinarily skilled artisan.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Rejections based on Prior Art

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al (6,692,251)

In Figure 2 Logan et al disclose a dental curing light having a primary heat sink 36, a well formed in the heat sink and having reflective walls 42 and semi conductor LED elements formed on a substrate 34. In regard to the plurality of epitaxial layers limitation, the limitation appears to be common and conventional in the construction of light emitting semiconductor chips. Merely specifying a common manner in which the Logan et al semiconductors are to be made would have been obvious to one of ordinary skill in the art.

In response to the present rejection applicant amended independent claims 1, 14 and 19 to require that "at least some of said light produced by said chip being emitted at an angular orientation." In Logan, the well has reflective surface 42 for reflecting incidental angled light being emitted from the LED's 30 (just like applicant's – note

Figure 8a). This incidental light that gets reflected by the well walls literally meets the limitation of "at least some light of said light produced by said chip emitted at an angular orientation . . ." The examiner suggests the language "at least some light of said light produced by said chip emitted from said well at an angular orientation. . ."


Action Made Final

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(703) 308-0770**. Fax (703) 872-9306. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (703) 308-2582.

R.Lewis
March 22, 2004


Ralph A. Lewis
Primary Examiner
Au 3732